TENTATIVE RULINGS

FOR: October 15, 2020

If you do not see a tentative ruling for a scheduled matter, then attendance at the hearing is required.

Remote appearances via Zoom are mandatory to prevent the spread of COVID-19. Please use Zoom at the links listed below. COURTCALL IS NO LONGER AVAILABLE.

If you have cases scheduled in both courtrooms at the same time, first log-in to the Zoom session for the department that has your quickest matter(s), and upon check-in, ask the clerk to email the clerk in the other department to advise that you will be late to the other Zoom session.

Dept. A Zoom
Join by Video (Preferred)
https://us02web.zoom.us/j/85897874559?pwd=Nk1VTnNQZmIzNXQwbVNiUk1iQTNCZz09
Join by Phone: 877 853 5247 or 888 788 0099 **Meeting ID:** 858 9787 4559 **Password:** 704959

Dept. B Zoom
Join by Video (Preferred)
https://us02web.zoom.us/j/89902611018?pwd=OXJRM2FFWHZ4YXJ4b2szZWs1UFJYZz09
Join by Phone: 877 853 5247 or 888 788 0099 **Meeting ID:** 899 0261 1018 **Password:** 776773

Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. Go to http://napacountybar.org/court-reporting-services/ for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Marc D Kaye v. County of Napa **20CV000684**

RESPONDENT NAPA COUNTY'S MOTION TO QUASH DEPOSITION NOTICE

TENTATIVE RULING: The motion is DENIED.

Respondent County of Napa (County) moves, pursuant to Code of Civil Procedure section 2025.410, for an order to quash the Notice of Deposition of Linda St. Claire, and for a protective order barring further discovery in the matter, on the grounds that the matter is a limited proceeding brought pursuant to Government Code section 53069.4 in which discovery is not permitted.

Respondent's Request for judicial notice is GRANTED IN PART. The Court takes judicial notice of the relevant portions of: (1) the June 13, 1995 Assembly on Committee Safety History for Senate Bill 814; (2) 1995 Legislative Digest for Senate Bill 814; (3) June 9, 1998 Assembly Bill Committee Analysis of Senate Bill 2139; and (5) Napa County Code section 1.28. The Court declines to take judicial notice of the Napa County Superior Court Fee Schedule on the grounds that it is not relevant to the Court's resolution of the issues presented by this motion.

Petitioner commenced this action by filing an "Appeal of Decision of Administrative Hearing Pursuant to California Government Code Section 53069.4" (Appeal). Through that filing, Petitioner appeals "the decision of the Office of Administrative Hearing, dated July 14, 2020…regarding [a] Napa County Citation." (Appeal at ¶ 1.) Government Code section 53069.4 (§53069.4) provides an administrative framework by which a local agency "may by ordinance make any violation of any ordinance enacted by the local agency subject to an administrative fine or penalty." (§53069.4, subd. (a)(1).)

"Notwithstanding Section 1094.5 or 1094.6 of the Code of Civil Procedure, within 20 days after service of the final administrative order or decision of the local agency is made pursuant to an ordinance enacted in accordance with this section regarding the imposition, enforcement, or collection of the administrative fines or penalties, a person contesting that final administrative order or decision may seek review by filing an appeal to be heard by the superior court, where the same shall be heard de novo, except that the contents of the local agency's file in the case shall be received in evidence." (§53069.4, subd. (b)(1).) That section further provides that, "[a] copy of the document or instrument of the local agency providing notice of the violation and imposition of the administrative fine or penalty shall be admitted into evidence as prima facie evidence of the facts stated therein. A copy of the notice of appeal shall be served in person or by first-class mail upon the local agency by the contestant." (*Ibid.*)

Of course, discovery is not an aspect of the appeal process. "When practicing appellate law, there are at least three immutable rules: first, take great care to prepare a complete record; second, if it is not in the record, it did not happen; and third, when in doubt, refer back to rules one and two." (*Protect Our Water v. Co. of Merced* (2003) 110 Cal.App.4th 362, 364.)

In seeking to obtain discovery in the present matter, Petitioner ignores the language of §53069.4, subdivision (b)(1), identifying the present procedure as an "appeal." He instead focuses on the following language of the statute: "A proceeding under this subdivision is a limited civil case." (§53069.4, subd. (b)(1).) Petitioner argues that discovery is explicitly permitted in this case pursuant to Code of Civil Procedure section 94. Petitioner's argument hinges on the following language of Code of Civil Procedure section 91, subdivision (a): "except as otherwise provided in this section, the provisions of this article apply to every limited civil case."

Petitioner's argument is inconsistent with the language of §53069.4, subdivision (b)(1) identifying the present action as an appeal (as well as the language of Petitioner's pleading in the matter). It also *appears* to be undermined by Code of Civil Procedure section 92, which provides that "[t]he pleadings allowed are complaints, answers, cross-complaints, answers to cross-complaints and general demurrers." There is no reference to "appeals" let alone "appeals pursuant to Government Code section 53069.4." However, an action brought pursuant to §53069.4, subdivision (b)(1), is, by the express terms of that statute, "an appeal to be heard by the superior court."

The Court acknowledges, however, that the section's identification of such an action as "a limited civil case" does suggest that the matter be governed by the procedures set out in the article of the Code of Civil Procedure governing limited civil cases. (See Code Civ. Proc. § 90, *et seq.*)

In addressing this "limited civil case" language, Respondent argues that, "as enacted and prior to statutory changes to account for court unification, Government Code section 53069.4 provided for an appeal of a citation with review de novo to the *municipal* court." (Support Memo at 9:1-2.) Based on the legislative analysis and history cited by Respondent, the Court agrees. (See Support Memo at 8:3-27.) Respondent then concludes that "[t]here was no intent to convert the administrative citation process in to a civil action with discovery and other time-consuming and expensive procedures." Respondent points to no authority in support of this assertion. The Court notes that the argument appears to directly contradict the plain language of §53069.4, subdivision (b)(1) ("[a] proceeding under this subdivision is a limited civil case"). Respondent continues by arguing that, "[u]pon unification, all civil matters in the municipal court became 'limited civil cases,' but that did not transform those matters into limited jurisdiction civil actions." (Support Memo at 9:5-6.) Again, Respondent's argument is without citation to authority.

In the context of this ambiguity, the Court is ultimately persuaded by specific procedural language in §53069.4 strongly suggesting that the nature of the review is a trial *de novo*, rather than a *de novo* review. (See §53069.4, subd. (b)(1).) As noted herein above, the section provides that, "the contents of the local agency's file in the case shall be received in evidence" and "[a] copy of the document or instrument of the local agency providing notice of the violation and imposition of the administrative fine or penalty shall be admitted into evidence as prima facie evidence of the facts stated therein." (*Ibid*.) The legislature could have indicated that these materials should "constitute the administrative record" or that an administrative record should include these materials. But it did not. Its election to use the phrases "received in evidence" and "admitted into evidence" suggests an intention that the Court actually receive evidence prior to conducting its review. This, in turn, suggests that the review is a trial *de novo*, rather than an appellate review of an established record under a *de novo* standard of review.

This conclusion is supported by the holding in *County of Humboldt v. Appellate Division of Super. Ct.* (2020) 46 Cal.App.5th 298, 313 (*Humboldt*). "[A]lthough designated an 'appeal' by section 53069.4, the de novo review process authorized by that statute is, in essence, an original proceeding in the superior court reviewing the propriety of a local agency's final administrative decision after hearing to impose fines or penalties." (*Ibid*.) Defendant cites the *Humboldt* opinion and quotes language therefrom which suggests that the trial court in the underlying case did not receive evidence outside of the administrative record. (See Reply at 4:23-5:2.) This Court finds no indication or authority suggesting that the trial court was prohibited from receiving such additional evidence. Moreover, this Court's conclusion is further reinforced by the *Humboldt* court's explanation that the legislative history behind §53069.4 reflects an intention to have the process mirror that provided for *de novo* appeals from parking violations pursuant to Vehicle Code section 40230. (See *Humboldt* , *supra* , at 313.) That appeal process provides for trial *de novo*, in the same way a small claims appeal does. (See *Lagos v. City of Oakland* (1995) 41 Cal.App.4th.Supp. 10.)

Petitioner's argument is, in essence, that he should be permitted to develop evidence for presentation in his *de novo* appeal by conducting the limited discovery explicitly provided for in limited civil cases. (Code Civ. Proc. §§ 91, 94.) Based on the foregoing, the Court agrees.

PROBATE CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Conservatorship of Lee, Mary Margaret **26-58701**

STATUS REVIEW

TENTATIVE RULING: Subject to a request to update the Court on any issues, the matter is continued to November 5, 2020, at 8:30 a.m. in Dept. B to allow time for the filing of the supplemental reports.

Conservatorship of Justin Edward Sandness, Jr. **PR24653**

FOURTEENTH AND FINAL ACCOUNT AND REPORT OF CONSERVATOR AND REQUEST FOR ALLOWANCE OF CONSERVATOR AND ATTORNEY'S FEES

TENTATIVE RULING: GRANT petition, including fees as prayed. The Court construes the verification as applying to this accounting based on the date it was signed.

The Court received the June 3, 2020, provisional order from the Nye County, Nevada, district court. All documents required to terminate the conservatorship in California have been filed. The Court confirms transfer and will sign the proposed Final Order Confirming Transfer.

(CONTINUED NEXT PAGE)

CIVIL LAW & MOTION CALENDAR – Hon. Monique Langhorne, Dept. B (Historic Courthouse) at 8:30 a.m.

Melvyn Varrelman, et al. v. St. Helena Hospital, et al. **18CV001305**

DEMURRER TO THE FIRST AMENDED COMPLAINT

TENTATIVE RULING: Defendant Gansevoort H. Dunnington, Jr., M.D.'s unopposed demurrer to the "first amended complaint" on the ground of failure to state sufficient facts is SUSTAINED WITHOUT LEAVE TO AMEND.[1]

[1] The court file does not contain a first amended complaint. Plaintiffs instead filed a complaint followed by doe amendments naming two defendants.